c. 49, sec. 4. This statute accords with the decisions of England in whittling down the common-law doctrine. See *In re Berkovitz v. Arbib & Houlberg* (1921) 230 N. Y. 261, 276, 130 N. E. 288, 292. The instant case, in refusing to recognize the validity of an arbitration clause containing a condition subsequent, appears to have set a limit upon this process of qualification.

CONTRACTS—OPTIONS—NOTICE OF ELECTION EXERCISED BY MAILING LETTER.—The plaintiff company had an option to renew a contract for the defendants' services provided it gave the defendants notice of its election. A letter containing the notice was posted in due time, but was never received by the defendants. *Held,* that the option was sufficiently exercised by the mailing of the letter. *Shubert Theatrical Co. v. Rath* (Feb. 16, 1921) U. S. C. C. A. 2d, Oct. Term, 1920, No. 170.

Options have been interpreted both as conditional contracts and continuing offers, though it has been pointed out that there is a distinction between an option and an offer. Langdell, *Equitable Conversion* (1904) 18 HARV. L. REV. 11, 12. Whichever view one adopts, the legal relations created are the same. The optionee has the power to bind the optionor upon the terms and conditions of the contract. Giving of notice may be a condition precedent to the optionee's rights under the contract or it may be a prescribed manner of acceptance. In leasing contracts, with option to renew, notice has generally been held to be a condition precedent to the right to renew, and this condition is fulfilled only upon the receipt of the notice by the lessor. *Bluthenthal v. Atkinson* (1910) 93 Ark. 252, 124 S. W. 510; *Doepfner v. Bowers* (1907, Sup. Ct.) 55 Misc. 561, 106 N. Y. Supp. 932. This rule has been generally followed in other option contracts where notice is expressly required. Mere mailing of the notice is not sufficient, except when the party to be notified conceals himself or in some other way tries to avoid the service of the notice. *Haldane v. United States* (1895, C. C. A. 8th) 69 Fed. 819; *Wheeler v. McStay* (1913) 160 Iowa, 745, 141 N. W. 404, L. R. A. 1915 B, 181, note. So, in insurance contracts requiring notice of cancellation or of assessments, notice means actual notice, and the mere posting of the letter is not sufficient. *Farnum v. Phoenix Ins. Co.* (1890) 83 Calif. 246, 23 Pac. 869; *German Union Fire Ins. Co. v. F. J. Clarke Co.* (1911) 116 Md. 622, 82 Atl. 974, 39 L. R. A. (N. S.) 829, note. This result seems to be the most logical and just, since the parties by agreement have conditioned the acquirement or loss of contract rights upon the giving of the notice. *Hoban v. Hudson* (1915) 129 Minn. 335, 152 N. W. 723, L. R. A. 1916 B, 1114, note. The instant case reaches a conclusion inconsistent with the weight of authority in reasoning that the notice is the acceptance of a continuing offer in the contract. The court overlooks the fact that "notice" is expressly required, and even though the offer was made by post, an inference is not warranted that the defendants consented to be served with the notice by the mere posting of the letter. *Hoban v. Hudson, supra.*

CONTRACTS—LANDLORD AND TENANT—EFFECT OF THE NATIONAL PROHIBITION LAW ON LEASES.—The plaintiff sued for rent under a lease which provided that the demised premises be used for a "café" only. The defendant contended that the Eighteenth Amendment absolved him from liability under the lease. *Held,* that the plaintiff could recover. *Proprietor's Realty Co. v. Wohltmann* (1921, N. J. L.) 112 Atl. 410.

In a similar case, suit was brought to recover rent under a lease stipulating that the demised premises were to be used for the sole purpose of carrying on a "saloon" business. The defendant lessee pleaded the Eighteenth Amendment as a defence. *Held,* that the plaintiff could not recover. *Doherty v. Monroe Eckstein Brewing Co.* (1921, N. Y. Sup. Ct.) N. Y. L. J. April 18, 1921.

It has long been a settled rule that impossibility of performance arising from a change in the law exonerates a promisor. Anson, *Contract* (Corbin's ed. 1919) 433; where, however, the courts have tried to determine the degree of hardship of performance necessary to discharge a lessee, there is conflict. Some courts hold that where premises are leased for saloon purposes only, the lessee is not absolved from liability under a subsequently enacted prohibition statute. *O'Byrne v. Henley* (1909) 161 Ala. 620, 50 So. 83; *Hecht v. Acme Coal Co.* (1911) 19 Wyo. 18, 113 Pac. 788. Others hold that even where the premises are leased for saloon and hotel purposes the lessee is absolved. *Kahn v. Wilhelm* (1915) 118 Ark. 239, 177 S. W. 403; *Kaiser v. Zeigler* (N. Y. Sup. Ct.) N. Y. L. J. May 2, 1921. The most logical rule, however, seems to be that the court should first inquire whether the use is permissive or restrictive. *Brunswick-Balke-Collender Co. v. Seattle Brewing etc. Co.* (1917) 98 Wash. 12, 167 Pac. 58. If permissive the lessee will not be discharged. *Security Bank v. Claussen* (1919, Calif. App.) 187 Pac. 140. But if restrictive, the court should then further determine whether the business is merely made less valuable, in which case the lessee must still perform, or whether it is totally destroyed, in which case the lessee should be discharged. *Conklin v. Silver* (1919, Iowa) 174 N. W. 573; *The Stratford Inc. v. Seattle Brewing Co.* (1916) 94 Wash. 125, 162 Pac. 31. The instant New Jersey case decides that a "café" means a restaurant and saloon, and hence the rule that the business has merely become less valuable is applied; while the New York case decides that the "saloon" business is totally destroyed by the National Prohibition Act and hence the rule of total impossibility is applied. It is to be noted, however, that it is not the lessee's duty under the lease (i. e. to pay rent) which has become impossible to perform, but the condition precedent, which the courts imply, that the premises were to be used for a certain purpose.

CRIMINAL LAW—PROCEDURE—DOUBLE JEOPARDY—NEW TRIAL AFTER CONVICTION OF DEFENDANT.—The defendant was indicted for receiving stolen goods. At the same time, but in a separate indictment, another prisoner was charged with stealing and receiving the same goods. The two men were tried jointly and convicted. The defendant appealed on the grounds of "mis-direction and mis-reception of evidence." After notice of appeal it was discovered that the indictments were several. *Held,* that the trial was a nullity and a *venire de novo* should be awarded. *Rex v. Crane* (1920, Cr. App.) 124 L. T. R. 256.

The instant case suggests the interesting and much controverted question as to the extent of the power of a court to order a new trial in a criminal case after conviction. Unquestionably the early English law was to the effect that a court had no such power. It was argued that the defendant would be placed in double jeopardy. See *King v. Mawbey* (1796, K. B.) 6 T. R. 620, 638; 1 Chitty, *Criminal Law* (1819) secs. 653, 654. But, as in the instant case, a distinction was made where the court had no jurisdiction and the trial was a nullity. *Rex v. Fowler* (1821, K. B.) 4 Barn. & Ald. 273. This rule was adopted also in this country in a few early decisions, holding that a new trial could not be granted even on motion of the accused. *United States v. Gibert* (1834, C. C. 1st) 2 Sumner, 19. These cases, however, have been overruled in all jurisdictions in the United States either by decision or by statute, and a new trial may now be granted everywhere on motion of the defendant. *United States v. Keen* (1839, C. C. 7th) 1 McLean, 429; *People v. Grill* (1907) 151 Calif. 592, 91 Pac. 515. In England since 1907 "motions for a new trial and the granting thereof" are abolished. See Criminal Appeal Act, 1907, sec. 20. The only possibility now is that the court might grant a new trial *ex proprio motu.* The English courts have refused to do this, even where the defendant has appealed. *Rex v. Dyson* (1908) 1 Cr. App. 13; *Rex v. Dibble* (1908) 1 Cr. App. 155. They still recognize the